

Message Text

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C O N F I D E N T I A L KUALA LUMPUR 1474

BANGKOK FOR DEA RO: HONG KONG FOR LEGAL ATTACHE

E.O.11652: GDS
TAGS: SNAR, PDIP, MY
SUBJECT: EXTRADITION: CHUA HAN MOW

REF: A) KUALA LUMPUR 1084, B) 77 STATE A-4742

1. CONTRARY TO OUR EARLIER EXPECTATIONS (REF A), THE HEARING FOR THE EXTRADITION OF CHUA HAN MOW WAS NOT WOUND UP ON FEBRUARY 4 BUT WAS CONTINUED TO FEB 16. THE FEB 4. SESSION WAS A RELATIVELY BRIEF ONE IN WHICH DEFENSE COUNSEL KARPAL SINGH ATTEMPTED TO RAISE QUESTIONS ABOUT US JUDICIAL PROCEDURES. WHEN EMBOFF WAS UNABLE TO ANSWER MOST OF THE QUESTIONS FROM THE STAND, KARPAL REQUESTED AN EXTENSION IN ORDER TO CLARIFY THESE POINTS. A SECOND EMBOFF WITH A LEGAL DEGREE ANSWERED KARPAL'S QUESTIONS IN THE JUDGE'S CHAMBERS ON FEB 16, AND THE HEARING REOPENED.

2. THE PROSECUTION INTRODUCED AS EVIDENCE IN THE
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CASE THE 1931 US-UK EXTRADITION TREATY AND THE EXCHANGE OF NOTES IN 1958 BY WHICH THE GOM ACCEPTED THE OBLIGATIONS OF THE 1931 TREATY. ALTHOUGH THE PROSECUTION ATTORNEY HAS NOT MADE KNOWN HIS INTENTIONS TO THE DEFENSE (KARPAL WAS SURPRISED TO EVEN HEAR OF THE EXISTENCE OF THE 1931 TREATY AND THE EXCHANGE OF NOTES), THE PROSECUTION INTENDS TO

USE THE TREATY TO COVER A SECTION OF THE GOM EXTRA-DITION ORDINANCE WHICH REQUIRES THAT THE RECEIVING STATE GUARANTEE THAT THE PERSON BEING EXTRADITED WILL BE TRIED ONLY FOR THE OFFENSES FOR WHICH HE IS BEING EXTRADITED. WE WERE UNABLE TO DISCOVER WITH THE RESOURCES AT OUR DISPOSAL ANY SUCH SPECIFIC PROVISION IN US LAW WHICH COULD BE USED IN ITS PLACE. (FYI. ALTHOUGH THE 1931 TREATY WILL BE CITED FOR THIS LIMITED PURPOSE, THE GOM STILL MAINTAINS ITS POSITION THAT AN ORDER HAS NOT BEEN ISSUED TO APPLY THE TREATY TO THE EXTRADITION ORDINANCE AND IT THUS CANNOT BE USED BY THE GOM AS THE BASIS FOR EXTRADITING A PERSON TO THE U.S. THE GOM IS BASING ITS ACTION IN THIS CASE ON A 1977 AMENDMENT (SECTION 3A) TO THE EXTRADITION ORDINANCE WHICH ALLOWS FOR EXTRADITION IN THE ABSENCE OF A TREATY. END FYI.)

3. AT THE FEB 16 HEARING DEFENSE COUNSEL KARPAL APPLIED TO SUBPOENA FORMER MINISTER OF LAW TAN SRI ABDUL KADIR YUSOF TO TESTIFY ON HIS ORDER TO THE MAGISTRATE TO HEAR THIS EXTRADITION CASE AND THE EXISTENCE OF AN EXTRADITION TREATY BETWEEN THE US AND MALAYSIA; THE APPLICATION WAS DENIED. KARPAL ALSO APPLIED FOR SUBMISSION OF THE CASE TO THE HIGH COURT BECAUSE HE WISHED TO RAISE CONFIDENTIAL

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CERTAIN CONSTITUTIONAL ISSUES; THIS APPLICATION WAS ALSO DENIED. JUDGE P.M. MAHALINGAM, IS DISALLOWING BOTH APPLICATIONS, SAID KARPAL COULD MAKE SUBMISSIONS ON THE POINTS IN QUESTION IN HIS SUMMATION. THE HEARING WAS RECESSED UNTIL FEB 24-25. DEFENSE ATTORNEY KARPAL SAID THAT HE DOES NOT INTEND TO CALL WITNESSES, ALSO WE EXPECT THAT THE PROSECUTION AND THE DEFENSE WILL MAKE THEIR SUMMATIONS TO THE COURT AT THE NEXT SESSION.

4. APART FROM THE TRIAL AND AFTER CONSULTING WITH OUR ATTORNEY AND THE MINISTRY OF LAW, WE SUBMITTED THE REQUEST FOR THE EXTRADITION OF CHUA HAN MOW BASED ON THE CASE IN THE NORTHERN DISTRICT OF CALIFORNIA (REF B) ON JAN 30. THE LAW MINISTRY HAS DECIDED TO TREAT THE NEW YORK AND CALIFORNIA CASES SEPARATELY AND INSTITUTE A NEW PROCEEDING AGAINST CHUA BASED ON THE CALIFORNIA CASE. IF THE FIRST HEARING IS SUCCESSFUL, THE MINISTRY EXPECTS THAT THE SECOND CASE WILL BE QUICKLY APPROVED BY THE SESSIONS COURT. KARPAL HAS INDICATED THAT HE WILL APPEAL IF EXTRADITION IS

ORDERED BY THE SESSIONS COURT AND IT IS POSSIBLE
THAT THE APPEALS FROM THE DECISIONS ON THE TWO
CASES IN THE LOWER COURT (IF BOTH ARE SUCCESSFUL)
WILL BE JOINED FOR THE HIGH COURT HEARING. A
HEARING DATE HAS NOT YET BEEN SET FOR THE SECOND
CASE.

5. THE CASE CONTINUES TO RECEIVE MODERATE PRESS
PLAY, BUT WE HAVE HAD NO FURTHER INQUIRIES
AFTER OUR FIRST NO COMMENT STATEMENTS.
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